IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 211 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMANTKUMAR MEGHJIBHAI PATEL

Versus

VIRJIBHAI LALJIBHI TANTI

Appearance:

MR ND NANAVATY for Appellant

MR PC KAVINA for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 11/07/2001

ORAL JUDGEMENT

1. Admit. Learned Advocate Mr. P.C. Kavina waives service on behalf of all the respondents.

2. Heard learned Advocate Mr. N.D. Nanavati for the Appellant and learned Advocate Mr. P.C. Kavina for the respondents.

3. This Appeal from Order is filed against the order passed below Exh. 47 on 15th January, 2001 in Spl. Civil Suit No. 166 of 1999, pending before the learned Civil Judge, (SD) at Rajkot.

4. The chequered facts of this case are as under :

The present appellant - plaintiff filed a Spl. Civil Suit No. 166 of 1999 before the learned Civil Judge (SD) at Rajkot, in which the plaintiff also preferred an Application Exh. 5 for temporary injunction against the defendants. The application for temporary injunction was ultimately rejected by the learned Trial Judge and, therefore, the plaintiff preferred an Appeal From Order No. 621 of 1999 in this court. The same was withdrawn by the plaintiff with liberty to file amendment application and also to file an application to join other defendants as parties and to file an application for temporary injunction against the proposed defendants. This Court, thereupon, passed the following order on 30th December, 1999 :

" The Appeal From Order is disposed of as withdrawn. As the appellant wants to file an amendment application, and an application to join other defendants as parties and to file injunction application against defendants, the appellant is at liberty to file the applications as aforesaid and in the event the appellant file applications as aforesaid, the court below shall decide the same on merits without being influenced by the fact that this Appeal From Order is withdrawn by the appellant and the fact that previously the court has passed the order below Exh.5.

Subject to the aforesaid direction, the Appeal From Order is disposed of as withdrawn. No order as to cost.

As the Appeal From order is disposed, Civil Application No. 14045/99 does not survive and it is disposed of accordingly. Direct Service. "

5. In the Spl. Civil Suit No. 166 of 1999, Plaintiff/Appellant filed application for impleading other defendants vide Exh. 46 and application for

temporary injunction against all the defendants vide Exh.47 was also filed.

6. In view of the above order passed by this Court on 30th December, 1999 in Appeal From Order No. 621 of 1999, the learned Trial Judge was directed to decide the application for temporary injunction - Exh.47 on its own merits and without being influenced by the fact that Appeal From Order No. 621 of 1999 was withdrawn and without being influenced by the fact that previously the trial court had passed the order below Exh. 5. Meaning thereby, in uncertain terms, that the Application Exh.47 preferred by the plaintiff for temporary injunction against the defendants was required to be decided by the learned Trial Judge without being influenced by the fact that the Trial Court had passed the impugned order below Exh.5 application of the plaintiff.

7. Despite the above clear direction of this Court as aforesaid, from the order passed below Exh. 47, it clearly appears that the learned Trial Judge is highly influenced by the fact that the earlier application Exh.5 for the temporary injunction was considered by the same

court, and on the same reasoning, without considering the merits afresh, the application Exh. 47 came to be rejected by the learned Trial Judge vide order dated 15th January, 2001, which is impugned in this Appeal From Order.

8. It is again directed to the Trial Court emphatically that the Trial Court to decide Application Exh.47 in terms of the order passed by this court on 30.12.1999 i.e. without being influenced (i) of the fact that the Appeal From Order No. 621 of 1999 is withdrawn and (ii) of the fact that previously the court passed the order below Exh.5. The Trial Court shall afford opportunity to both the parties to give afresh hearing in respect of Exh. 47 and shall decide application at Exh. 47 on its own merits and in terms of the order passed by this Court on 30.12.1999. Without expressing any adverse opinion on the reasoning of the impugned order which is apparently not in pursuance of the directions of the order of the court, solemn hope is expressed that the Trial Court shall read the order of this court passed on 30.12.1999 and shall give effect to the same in its true spirit while deciding Application Exh. 47.

9. In this view of the matter, the order impugned below Exh. 47 passed by the Trial Court on 15.1.2001 is set aside. Appeal is allowed to that extent and Trial

Court is directed to decide Application Exh. 47 afresh as directed above. No order as to cost.

10. Further, the Trial Court is directed to decide Exh. 47 within six weeks from the date of receipt of the writ of this Court or on producing the certified copy of this order by any of the parties before the Trial Court. Office is directed to transmit the writ of this order to the Trial Court as expeditiously as possible.

(J.R. Vora, J.)

p.n.nair